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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,833	10/30/2003	Cristiana Soldani	88265-7287	7187

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EXAMINER

PEARSE, ADEPEJU OMOLOLA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/695,833	Applicant(s) SOLDANI, CRISTIANA	
	Examiner Adepeju Pearse	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-12 in the reply filed on 11/21/2005 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serpelloni et al (U.S. Pat. No. 5,629,042) in view of Gonze et al (U.S. Pat. No. 5,314,708) and Aldrich et al (U.S. Pat. No. 4,154,867). With regard to claims 1 and 10, Serpelloni et al disclose that sugar-free hard boiled candy are generally prepared by boiling mixtures of polyols dissolved into water. Most often they are maltitol syrups. Other polyols could be added in powdered form including maltitol, isomalt etc. The mixture is boiled under atmospheric pressure in order to evaporate most of the water and boiling is generally completed under vacuum so as to further

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reduce the water content the obtained product is cooled. The obtained product has a texture and an appearance similar to those of glass (col 1 lines 27-46). However, Serpelloni et al failed to disclose adding an acid to the mixture. Aldrich et al teach sugarless candies comprising of a sugar alcohol, malic acid as a flavor enhancer (col 1 lines 4-10). It would have been obvious to one of ordinary skill in the art to modify Serpelloni et al with Aldrich et al by incorporating an acid in the confectionery mixture to enhance flavor.

5. With regard to claim 2, Serpelloni et al disclose that the mixtures of polyols are boiled until 150 to 200°C under atmospheric pressure in order to evaporate most of the water. However, Serpelloni failed to disclose a temperature of 148°C or below. Gonze et al teach process for preparing a hard candy at a process temperature above 145°C but less than 160°C, which encompasses 148°C (col 2 lines 58-62) in order to have a product containing 2% by weight residual water or less which does not show significant moisture pick-up on storage (col 2 lines 65-68, col 3 line 1). It would have been obvious to one of ordinary skill in the art to modify Serpelloni et al with Gonze et al by utilizing a process temperature as disclosed by Gonze et al in order to prevent moisture pickup on storage.

6. With regard to claims 3 and 4, Serpelloni et al disclose that the mixture is boiled under atmospheric pressure in order to evaporate most of the water and boiling is generally completed under vacuum so as to further reduce the water content the obtained product is cooled.

7. With regard to claim 5, Serpelloni et al disclose that the mixture is boiled under atmospheric pressure in order to evaporate most of the water. However, Serpelloni et al failed to disclose evaporating in multiple stages. It would be obvious to one of ordinary skill in the art to

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expect that the evaporation of water is an experimental result variable based on the amount of water loss required and could be done in one stage or multiple stages.

8. With regard to claim 6, Serpelloni et al failed to disclose a feeding the liquid starting material into an evaporator at a specified temperature without vacuum. However, Gonze et al teach a process for preparing hard candy comprising sugar alcohols such as maltitol. A feedstock comprising water is heated to an elevated temperature until a product is obtained with preferred water content. A low vacuum is applied at the end of the heating to further facilitate water removal (col 2 lines 16-26). Gonze et al is silent as to the temperature of the vessel used in the process. However, it would be obvious to one of ordinary skill in the art to expect that the elevated temperature taught by Gonze et al incorporates the range recited by applicant and it would be obvious to expect that the temperature would be based on the amount of water loss required.

9. With regard to claim 7, Serpelloni et al failed to disclose a water content reduced to below 3%. However, Gonze et al teach a process for preparing a hard candy in order to have a product containing 2% by weight residual water or less which does not show significant moisture pick-up on storage (col 2 lines 65-68, col 3 line 1). It would have been obvious to one of ordinary skill in the art to modify Serpelloni et al with Gonze et al by utilizing a process temperature as disclosed by Gonze et al in order to prevent moisture pickup on storage.

10. With regard to claims 8 and 9, Serpelloni et al disclose sugar alcohols including maltitol, isomalt etc (col 1 lines 32-33).

11. With regard to claims 11 and 12, Serpelloni et al failed to disclose an acid. However, Aldrich et al teach a concentration of 0.5 to 2.5% of malic acid (col 2 line 24) as a flavor

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enhancer, which encompasses applicant's recited range. It would have been obvious to one of ordinary skill in the art to modify Serpelloni et al with Aldrich et al by incorporating an acid in the confectionery mixture to enhance flavor.

Conclusion

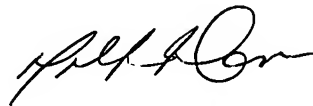
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Adepeju Pearse
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